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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,723	02/24/2004	Douglas A. Learned	INCIT:66043	2757
24201	7590	05/17/2006		
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045			EXAMINER BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,723	LEARNED, DOUGLAS A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 19-21, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen [Pat. No. 4,755,060] in view of Verkler [Pat. No. 4,693,611].

Pedersen teaches a device and method for dispensing ice cream comprising a housing (Figure 1, #10), a conical receiving chamber attached to the housing (Figure 1, #20), an adjustably mounted auger which can be moved vertically (Figure 1, #17; column 5, lines 4-18), a safety shield movably mounted to the housing (Figure 1, #24), a safety interlock system for the shield and auger (column 2, lines 46-63; column 5, line 17), an electronic control system (column 2, line 67), a drive motor for the auger (column 2, line 10), mixing the ingredients with cold injected air (column 2, lines 56-63), dispensing the product through an outlet into a container (column 4, lines 42-48), and the ingredients including fresh and frozen fruit (column 1, line 12; column 4, line 1). Pedersen does not recite the receiving chamber being pivotally attached. Verkler teaches an ice cream device comprising a pivotable receiving chamber (Figure 5, #14). It would have been obvious to one of ordinary skill in the art to incorporate the pivotable chamber of Verkler into the invention of Pedersen since both are directed to ice cream devices, since

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Pedersen already included a receiving chamber (Figure 1, #20), and since the pivotable chamber of Verkler provided easier access for loading ice cream as well as cleaning the chamber (column 6, line 43).

3. Claims 4, 13-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen, in view of Verkler, as applied above, and further in view of Hansen Sr [Pat. No. 6,341,887].

Pedersen and Verkler teach the above mentioned components. Pedersen also included a base (Figure 1, #21), a control panel (Figure 1, #16), and timing and control circuitry (column 4, line 26). Pedersen and Verkler do not recite the control being programmed for time and speed, and a microprocessor. Hansen Sr teaches an ice cream device comprising a programmable electronic control unit with microelectronics for both manual and automatic control of vertical movement, switches, lamps, motors, control valves, sensors, and a timer (column 4, lines 41-52). It would have been obvious to one of ordinary skill in the art to incorporate the control system of Hansen Sr into the invention of Pedersen, in view of Verkler, since all are directed to ice cream devices, since Pedersen already included a control system (column 4, line 26), and since these components were commonly included in control systems for ice cream machines as shown by Hansen Sr.

4. Claims 6 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen, in view of Verkler, as applied above, and further in view of Heinhold et al [Pat. No. 5,067,819] and Williams [Pat. No. 5,718,508].

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Pedersen and Verkler teach the above mentioned components. Pedersen and Verkler do not recite holes in the auger for cleaning fluid. Heinhold et al teach an ice cream machine with nozzles for emitting cleaning fluid (Figure 4, #56). Williams teaches a mixing device comprising an auger with holes which emit cleaning fluid (Figure 2, #46-47). It would have been obvious to one of ordinary skill in the art to incorporate the cleaning fluid and auger holes of Heinhold et al and Williams into the invention of Pedersen, in view of Verkler, since all are directed to mixing devices with augers, since ice cream devices needed to be periodically cleaned in order to prevent bacterial growth, since Heinhold et al teach that ice cream machines were commonly cleaned via holes emitting cleaning fluid (Figure 4, #56), and since Williams teaches that mixing devices commonly included augers with holes which emit cleaning fluid (Figure 2, #46-47).

5. Claims 7-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen, in view of Verkler, Heinhold et al, and Williams, as applied above, and further in view of Hansen Sr.

Pedersen, Verkler, Heinhold et al, and Williams teach the above mentioned components. Pedersen also included a base (Figure 1, #21), a control panel (Figure 1, #16), and timing and control circuitry (column 4, line 26). Pedersen, Verkler, Heinhold et al, and Williams do not recite the control being programmed for time and speed, and a microprocessor. Hansen Sr teaches an ice cream device comprising a programmable electronic control unit with microelectronics for both manual and automatic control of vertical movement, switches, lamps, motors, control valves, sensors, and a timer

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(column 4, lines 41-52). It would have been obvious to one of ordinary skill in the art to incorporate the control system of Hansen Sr into the invention of Pedersen, in view of Verkler, Heinhold et al, and Williams, since all are directed to mixing devices, since Pedersen already included a control system (column 4, line 26), and since these components were commonly included in control systems for ice cream machines as shown by Hansen Sr.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen, in view of Verkler and Hansen Sr, as applied above, and further in view of Neilson [Pat. No. 5,439,289].

Pedersen, Verkler, and Hansen Sr teach the above mentioned components. Pedersen, Verkler, and Hansen Sr do not recite a stepper motor. Neilson teaches an ice cream device comprising a stepper motor (column 5, line 46). It would have been obvious to one of ordinary skill in the art to incorporate the step motor of Neilson into the invention of Pedersen, in view of Verkler and Hansen Sr, since all are directed to ice cream machines, since Pedersen already included a vertically movable auger (column 5, lines 4-18), and since the step motor of Neilson was an effective means for raising and lowering components.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hansen Sr [Pat. No. 6,318,889] and Reed [Pat. No. 3,061,279] teach ice cream machines.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-9 and 11-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DREW BECKER  
PRIMARY EXAMINER  
5-12-06